TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented on Cross-Petition	2
Statute Involved	2
Statement of the Case	2
Argument	7
Conclusion	10

TABLE OF AUTHORITIES

Case:

Sertic v. Cuyahoga, Lake, Geauga & Ashtabula Cos., 423 F.2d 515 (6th Cir. 1970) 6, 7

Statutes:

28 U.S.C. § 1254(1) 2

Labor-Management Reporting and Disclosure Act of 1959:

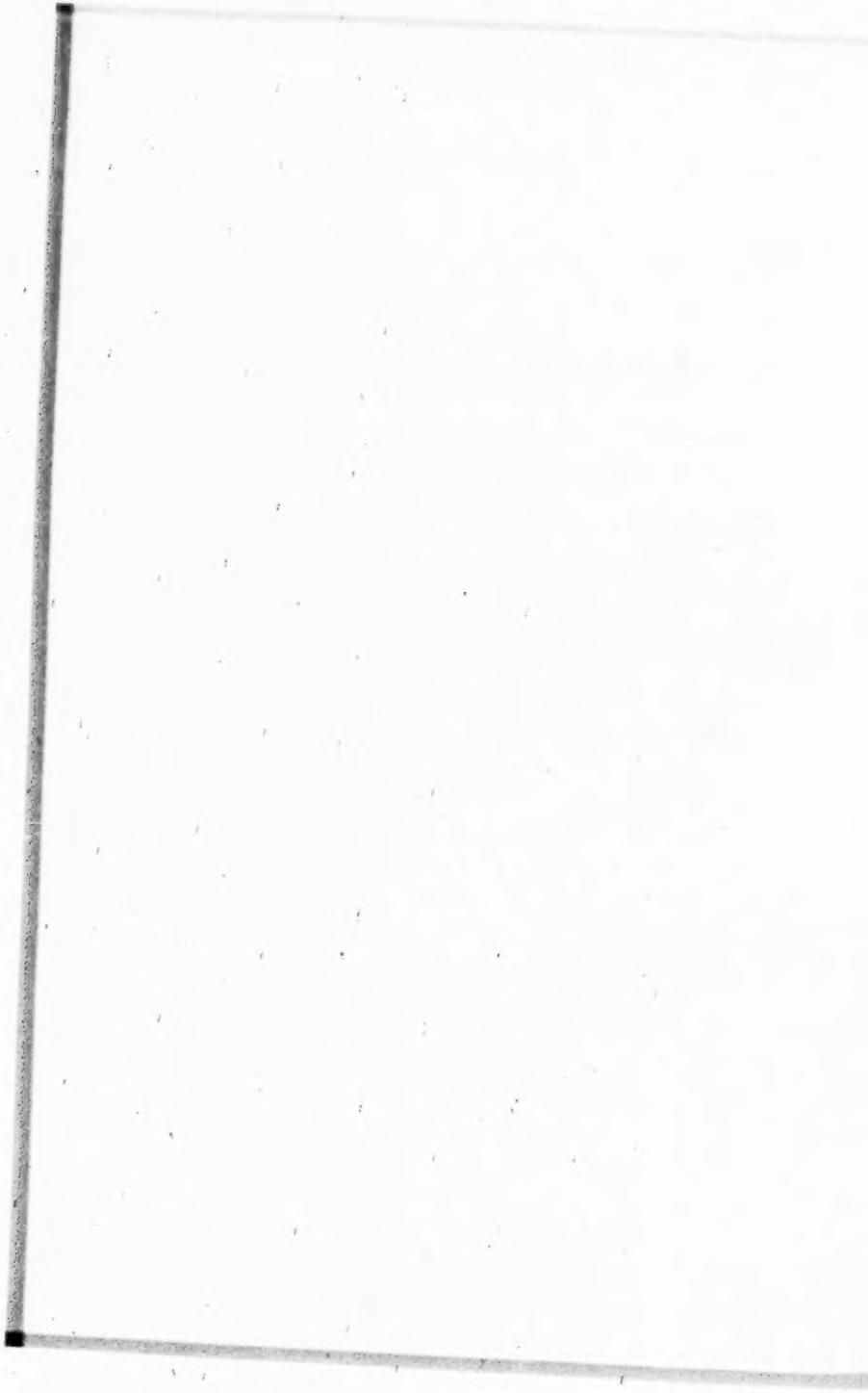
Section 101 9

Section 101(a)(1) 2

Section 101(a)(3) 2, 8

McKinney's Consolidated Laws of New York, Constitution, Book 2, p. viii 9

McKinney's Consolidated Laws of New York, Municipal Home Rule Law, Book 35C, Section 36 9



IN THE

Supreme Court of the United States

October Term, 1974

No. 74-541

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SOHNEN and JOHN HAYES, each of them individually and on behalf of all other members of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, similarly situated,

Petitioners,

against

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer, or WILLIAM M. CALDWELL, as Vice President, of INTERNATIONAL ORGANIZATION OF MASTERS. MATES AND PILOTS, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO CROSS-PETITION

Opinions Below

The opinion of the Court of Appeals is reported at 497 F.2d 1276 (pp. 1-15a of Appendix to defendants' petition for certiorari) (hereafter "Appendix"). The opinion of the District Court is unreported (pp. 17-27a of Appendix).

Jurisdiction

The order of the United States Court of Appeals for the Second Circuit was entered on May 28, 1974 (p. 1a of Appendix). A petition for rehearing was denied on August 6, 1974 (pp. 29, 30a). The jurisdiction of this Court over both defendants' petition and plaintiffs' cross-petition rests on 28 U.S.C. § 1254(1).

Question Presented on Cross-Petition

Where a Union's special Constitutional Convention adopts a new Constitution substantially restructuring the Union and containing a large number of interrelated provisions, including a change in the dues formula provided under the old Constitution, does the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) prohibit the Union from presenting the entire new Constitution for membership approval or disapproval as a single proposition?

Statute Involved

Section 101(a)(1) of the LMRDA is set forth in defendants' petition, p. 3, and plaintiffs' cross-petition, p. 3. Section 101(a)(3) is set forth at pp. 3-4 of the cross-petition.

Statement of the Case

The cross-petition seeks review of a holding of the Court of Appeals, affirming in this respect the decision of the District Court, that a labor organization referendum on a totally new Constitution produced by a special Constitutional Convention need not be presented in fragmented fashion through a seriatim vote on each of its numerous interrelated provisions, but may be submitted for approval or disapproval as a single instrument.

At trial plaintiffs themselves admitted that the key provisions of the new Constitution, including those referred to at p. 8 of the cross-petition, were closely interrelated. For example, the cross-petition complains that the new Constitution gave new powers to the three International Officers by increasing their voting strength on the International Executive Board. But plaintiff Sheldon, plaintiffs' principal witness, admitted that under the previous Constitution, the chief executive officers of the locals had seats on the Executive Board and voting strength proportionate to their local membership. The executives of the three largest locals, he testified, controlled about 50% of the vote on the full board. One of the principal purposes of the new Constitution was to consolidate locals into functional divisions corresponding to the industry's collective bargaining structure. Necessarily, as Sheldon admitted, the elimination of local unions required a basic change in the composition and voting strength of the Executive Board. The Constitutional Convention decided to confer the voting strength formerly reposing in the three local executives upon the three International officers, who were elected by the entire union membership. A seriatim vote on individual amendments—which plaintiffs contend to be necessary—might have approved the elimination of locals and disapproved the new composition of the Executive Board. This would have left an Executive Board composed largely of non-existent chief executives of non-existent locals.

The dues increase was also inextricably intertwined with the elimination of locals and their consolidation into divisions. One of the purposes of consolidation, plaintiff Sheldon testified, was to enable the Union to close its membership rolls so as to accommodate its numbers to a declining job market; and a provision closing the rolls was incorporated in the new Constitution. This could not be accomplished under the former system of autonomous locals, because the locals insisted on admitting new mem-

bers, thereby increasing their revenues from initiation fees and dues. The closing of the membership rolls, however, also cut off new initiation fees as a possible source of revenue to the International while, at the same time, the consolidation increased its burdens and responsibilities. Accordingly, Sheldon testified, the closing of the rolls necessistated a dues increase. And because the International dues of IOMM&P members were always set forth in the International Constitution itself, any change had to come by way of Constitutional amendment.

Plaintiffs' own testimony established similar interrelationships with the other provisions cited at p. 8 of the cross-petition. Moreover, the new Constitution contained a number of other changes, not mentioned in the cross-petition, which were also related to the consolidation and the increased powers and responsibilities that thereby devolved upon the International officials. For the draftsmen of the new Constitution accompanied the enlarged role of the International officers with new guarantees of accountability to the membership. Thus the new Constitution shortened the term of office, instituted a recall procedure, liberalized nomination procedures and qualifications for office, established new referendum requirements on important issues, provided for more frequent conventions, and granted access to the Union newspaper for opposing views.

Under the plaintiff's position of a mandatory seriatim vote on each proposed amendment, the enlarged powers of the International officers might have been approved and the new measures to assure official accountability disapproved. The Constitutional Convention delegates, the draftsmen of the new Constitution, obviously believed that the two sets of changes complemented each other, and the Courts below held this to be a reasonable conclusion.

The District Court found:

> "7. The old Constitution prescribed minimum dues to be charged by all Locals to their members.

The new Constitution, as part of the restructuring and consolidation, prescribed fixed, identical dues for all offshore members. For most offshore members this meant an increase in dues, although in varying amounts.

"8. The Union, and particularly the Convention delegates responsible for drafting the new Constitution to be submitted to the membership, could reasonably have concluded that the dues increase for offshore members was related to the restructuring and consolidation of the Union provided for in the new Constitution, including the limitation on new members."

Based on the findings of fact, none of which plaintiffs challenge, the District Court entered the following conclusions:

"3. In view of the substantial restructuring and consolidation of the Union embodied in the new Constitution, and the interrelationship which the Union could reasonably find to exist between the various changes made, it was not unreasonable to present the entire Constitution as a single package to be approved or disapproved by the Convention and thereafter the membership.

"4. In view of the fact that the minimum dues were set forth in the old Constitution and in view of the relationship between the proposed dues increase and other changes made in the new Constitution, it was not unreasonable to embody the new Offshore dues in the New Constitution and not to have a separate vote on the issue of a dues increase. This procedure did not coerce the membership or deprive them of the opportunity to vote upon the dues increase.

"5. Section 101 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401

does not require that all Constitutional amendments to a union Constitution be submitted to a vote seriatim.

"6. Nor does that statute require that a proposed increase in dues—a subject dealt with in the Union Constitution—be voted upon separately from the remainder of the Constitution, particularly when the Union may reasonably conclude it to be interrelated with other proposed amendments."

In affirming this aspect of the District Court decision, the Court of Appeals held:

"Plaintiffs rely on *Sertic* v. *Cuyahoga, Lake, Geauga & Ashtabula Cos.*, C.D.C, 423 F.2d 515 (6 Cir. 1970), where the court held that a referendum that resulted in an increase in dues, in which the ballot gave a member no opportunity to vote against such increase without also voting against negotiations for a wage increase, was a violation of the LMRDA. The Sixth Circuit stated that free participation in union government 'necessarily would include the right to vote "yes" or "no" on increases of dues or assessments without coercion. * * * Union members are entitled under the Act to the right of a meaningful vote on increases in dues or assessments'. (p. 521). We do not disagree with the principles stated in *Sertic*, but we conclude that those principles did not require the union in the instant case to submit for a separate vote each of the many interrelated provisions of the proposed new constitution. The adoption of some of those provisions and the rejection of others might have resulted in an unworkable document, and thrown the operation of the union into confusion."

ARGUMENT

There is no inconsistency between the decision below and that of the Sixth Circuit in *Sertic* v. *Cuyahoga, Lake, Geauga & Ashtabula Cos.*, 423 F.2d 515. The *Sertic* Court held that, on the facts there presented, the union could not combine a vote on a wage increase and a rise in dues. Expressly noting that it did not disagree with the principles expressed in *Sertic*, the Second Circuit herein held that these principles do not require "a separate vote for each of the many interrelated provisions of the proposed new constitution."

In *Sertic*, after defeat of a proposed dues increase, the union combined the question of a dues increase with the ratification of a wage increase under a new collective bargaining agreement and presented both questions to the membership in a single proposition. Without approving the dues increase, the members could not receive the negotiated wage increase. Neither issue involved a Constitutional amendment. One had to do with internal union affairs, the other with employer-union collective bargaining; and there was no claim or showing of interrelationship between the two. Under the circumstances, the Sixth Circuit held the combination illegal. The District Court herein aptly observed: "[I]f the court that wrote that opinion was of the view that Congress intended to have dues questions submitted separately, it wouldn't have to go to the lengths it did to establish that particular procedure in a particular case was unfair.

In the present case, the question of a dues increase was not combined with a collective bargaining issue. The minimum dues had always been set in the Union Constitution itself, and hence the new Constitution had to deal with the subject. This was simply one of a large number of interrelated changes made in the preparation of a new Constitution. Like the other Constitutional changes, the dues increase stemmed from the basic restructuring of the

Union that prompted the entire project. The restructuring and consolidation meant that it would be more expensive to run the International. At the same time, and for related reasons, the membership rolls were closed, thus reducing the potential sources of revenue. The only way these dual objectives could be realized was through a dues increase. Adoption of the other amendments without insuring the means to finance them would have driven the Union into bankruptcy. No labor organization should be compelled to risk bankruptcy in an effort to modernize its structure and internal government. Nothing in Section 101(a)(3) of the LMRDA compels this result.

There is a vast practical distinction between adopting a new Constitution at a meeting or Convention and adopting it through a mail referendum. At a Convention, if provisions are voted upon seriatim, each delegate knows the results of the voting on the previous clauses. In a referendum, this is impossible. If there are fifty changes to be voted upon, no member knows the outcome on any proposition until the balloting is completed. The only way to parallel the Convention process is to have fifty separate referenda, conducted seriatim, each with its own mailing, counting, etc.

The ratification procedure adopted by the defendant Union herein is precisely the procedure used by states and municipalities throughout the nation. If only a handful of Constitutional amendments are proposed, they are typically presented to the electorate individually. But where a special Constitutional Convention thoroughly overhauls a state constitution or city charter, then the entire new instrument is usually presented to the voters as a single package and is voted up or down as an entity.

To take the state and city in which the Union has its principal office and in which this lawsuit arose, for example, the New York State Constitution is amended or replaced in precisely this fashion. In addition to presenting periodic

individual amendments, the State from time to time has convened Constitutional Conventions, which have produced wholly new and complete documents for consideration of the electorate. New York's most recent experience along this line is described as follows: McKinney's Consolidated Laws of New York, Constitution, Book 2, "Historical Background of the Constitution," p. viii:

> "In April of 1967, a Constitutional Convention was convened with the intention of generally revising and simplifying the existing Constitution. The revision was submitted to the people for approval in November 1967, on all-or-nothing basis with no voting on individual provisions, but it was not approved by the voters."

The procedures for adopting a new City charter in the State of New York are set forth in Section 36 of the New York State Municipal Home Rule Law, McKinney's, *op. cit.*, Book 35C. Paragraph 5(b) of that Section clearly empowers the charter commission to present the new charter to the voters in a single package:

> "At such election, if a proposed new charter is submitted as a single propsal, there shall be submitted to the qualified electors of the city the question: 'Shall the new city charter proposed by the city charter commission be adopted?' "

It would be an astounding feat of statutory construction if Section 101 of the LMRDA were read so as to deny to labor organizations the ability to submit new Constitutions to their memberships in precisely the same manner that states and cities submit their proposed new Constitutions to the body politic.

We do not believe a union's right to submit a new Constitution as a single proposition is dependent upon the interrelationship of the various changes which it contains.

In the case of new state and city constitutions presented as one package, many of the new provisions are unrelated. This has never been deemed to require individual, seriatim submission; and there is nothing in the LMRDA to require a different rule. Here, however, the interrelationship of the various changes—found by both courts below and unchallenged throughout—provides not only a further justification for single submission, it made it a compelling necessity.

CONCLUSION

For all the foregoing reasons, plaintiffs' cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

MARVIN SCHWARTZ
BURTON M. EPSTEIN
243 Waverly Place
New York, New York 10014

SEYMOUR M. WALDMAN
501 Fifth Avenue
New York, New York 10017
Attorneys for Respondents

November 26, 1974